

considered view that the object and *ambit* of the Ordinance is such and the purposes specified in section 4(1) so wide as to negate any right in the applicant in the circumstances of this case to demand that the grave question of his guilt or innocence on the tentative charge of murder should be left to the court and the jury-box as the sanctuary of his life and liberty and not submerged in the amplitude of preventive detention on the basis of executive discretion and satisfaction conceived in the mind of the Minister or perhaps animated in his breast within the purview of the prescribed statutory provision on relevant grounds. Mere circumvention of the ordinary process of law cannot by itself amount to *mala fides* as otherwise this would in most cases virtually result in rendering moribund and impotent the laws legally enacted to provide for preventive detention for specified purposes."

Hence it is clear that the order of detention is not justiciable. But, however, it would have been open to the applicants to prove *mala fides* on the part of the detaining authorities and thus establish their right to the writ of habeas corpus on the ground that the order of detention is invalid. However, the onus of establishing *mala fides* is on the applicant but in this case there is not even the slightest suggestion on the part of the applicants that the order of detention was made *mala fides* nor has any attempt been made to establish *mala fides* on the part of the detaining authorities. Applicants have relied on other grounds to establish their right to the writ of habeas corpus. Therefore, in my view, there are no grounds whatsoever on which the court can hold there has been a transgression of the law in the order of detention issued by the Minister for Home Affairs.

Counsel also argued that Pulau Jerejak was a place of rehabilitation for citizens and therefore it was wrong to detain the applicants there. In this context I would not hesitate to say this is a total misconception. Pulau Jerejak is primarily a place to punish those who merit being detained there. It is to incarcerate them and prevent them inflicting more harm to society and attempting to destroy it. The second purpose is to deter them when they are released from following their old modes of life and also to deter others who may be like-minded from committing similar acts and deeds. Finally, if the detainees while under detention realise the evils of their ways and recognize that there is no place for their way of life in the context of the Malaysian society then they, and only they, have the opportunity of availing themselves of the facilities for rehabilitation offered to them in a detention centre. Some detenus do after a passage of time relent and repent and change their ways and earn the right to take their place in our society again. Others don't, and their expressions of repentance are as empty as their professions of a change of heart. Pulau Jerejak is a detention centre plain and simple. It is neither a holiday resort nor a rehabilitation centre.

In the result the application for habeas corpus fails. So, as far as the three applicants, Patrick Eugene Long @ Jimmy, Donnie Lee Avila @ Danny and Rudolf Robert Strictzbo @ Robbie @ Rob @ Radin Ariff, in Miscellaneous Criminal Applications 5, 6 & 7/76, respectively, have applied for writs of habeas corpus, the applications are dismissed.

Applications dismissed.

Solicitors: Karpal Singh & Co.

GOVERNMENT OF MALAYSIA v. LIN TING HSI

[A.C.J. (Hashim Yeop A. Sani J.) June 24, 1975]

[Ipoh — Civil Suit No. 258 of 1974]

Income Tax — Leave to sign final judgment given — Appeal by taxpayer — Effect of legislation — Income Tax Ordinance, 1947, ss. 72(1) & 81 — Income Tax (Amendment) Act, 1960, s. 2 — Income Tax Act, 1967, ss. 2, 96, 97(1), 99, 103(1) & (4), 106, 142(1) & 143 — R.S.C. O.14 r.1.

Income Tax Act, 1967 — Meaning of "assessment" and "sufficient" — Income Tax Act, 1967, ss. 2 & 142(1).

The respondent/plaintiff was granted leave to sign final judgment against the appellant/defendant for \$692,722.91 being income tax due for the Years of Assessment 1961 Additional to 1971 Additional (inclusive) and 10% increased levied under section 103(4) of the Income Tax Act, 1967. As required by the relevant provisions of the Income Tax Ordinance, 1947 and the Income Tax Act, 1967, the respondent had notified the appellant of the amount of chargeable income, the tax thereon, the place at which payment was to be made, the penalty for late payment increase and his rights of appeal. Notwithstanding these, the appellant failed to pay the said sum within the prescribed period. On the respondent's application, leave to sign final judgment was granted by the Senior Assistant Registrar, High Court, and he appealed against the latter's decision.

Held, dismissing the appeal: (1) the effect of the relevant provisions of the Income Tax Act, 1967 is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and the tax can then be recovered by the Government by civil proceedings as a debt due to the Government. On such civil proceedings brought by the Government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased;

(2) the provision of section 103 is not confined only to one assessment or a composite assessment. The word "assessment" is defined in section 2 of the 1967 Act to mean any assessment;

(3) in the context of sections 103(1), 106(1) & (3), 143(1) of the Income Tax Act, 1967 the word "sufficient" in section 142(1) means that it is conclusive for the purpose of O.14 r.1.

Cases referred to:-

- (1) *Sun Man Tobacco Co. Ltd. v. Government of Malaysia* [1973] 2 M.L.J. 163.
- (2) *Comptroller of Income Tax v. A. Co. Ltd.* [1966] 2 M.L.J. 282, 284.
- (3) *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 K.B. 64, 71.
- (4) *Board of Trade v. Sailing Ship "Glenpark" Limited* [1903] 2 K.B. 324, 329-330.
- (5) *Jacobs v. Booth's Distillery Company* 85 L.T.R. 262 (H.L.).
- (6) *Re Prince Blucher, Ex parte Debtor* [1931] 2 Ch. 71.
- (7) *Warburton v. Loveland* [1832] 2 Dow. & Cl. 480, 489.

CIVIL SUIT.

Abdul Rashid bin Abdul Manaff (Federal Counsel) for the respondent.

W.E. Balasingam for the appellant.

Hashim Yeop A. Sani J.: On January 6, 1975 the respondent applied for leave to sign final judgment in the action against the appellant for \$692,722.91, the amount endorsed on the writ with interest at the rate of 6 per cent per annum from the date of judgment to the date of payment and costs. In the statement of claim it was alleged that the appellant was justly

and truly indebted to the respondent in the sum of \$692,722.91 being income tax due for the Years of Assessment 1961 Additional, 1962 Additional, 1963 Additional, 1964 Additional, 1965 Additional, 1966, 1967 Additional, 1968 Additional, 1969 Additional, 1970 Additional, 1971 Additional and the ten per cent increase levied under section 103(4) of the Income Tax Act, 1967. The Additional Income Tax and Income Tax were raised on the appellant as described in the statement of claim.

As required by the provisions of section 72(1) and section 96 of the Income Tax Ordinance, 1947, and the Income Tax Act, 1967 respectively, the appellant had been notified of the amount of chargeable income, the tax thereon, the place at which payment was to be made, the penalty for late payment increase imposed by section 103(4) of the Income Tax Act, 1967, and his rights of appeal under sections 72(2) and 99 of the Income Tax Ordinance, 1947, and the Income Tax Act, 1967 respectively.

As the appellant failed to pay the said sum of \$633,789.83 within thirty days after the service of the Notices of Assessment, an addition of ten per cent increase was added to the abovementioned tax pursuant to provisions of section 103(4) of the Income Tax Act, 1967 as described in the statement of claim.

On January 6, 1975 leave to sign final judgment was granted by the Senior Assistant Registrar, High Court, Ipoh. The appellant now appeals.

On behalf of the appellant it was argued that the provisions of sections 103, 106 and 142 of the Income Tax Act, 1967 must be construed so as to comply with real intention of the Act. From this the appellant also developed the argument that section 103(1) applies only to an assessment or composite assessment not a conglomeration of assessments for a number of years. Consequently section 106 of the Act, which is the provision for recovery by suit, does not apply in this case. It also appears from the argument alternatively, that even if section 106 applies in this case the provision of section 142(1) of the Act is not conclusive but rebuttable upon proof that the certificate signed by the Director-General is either incorrect or the amount of tax is shown to be not final or otherwise inconclusive. The certificate under section 142(1) is not conclusive if the assessment is not final and conclusive under section 97(1) of the Act, that is to say, where a valid notice of appeal against the assessment has been given under section 99 within the time specified as happened in this case as admitted by the respondent.

The effect of sections 103, 106 and 142(1) of the Income Tax Act has been settled in *Sun Man Tobacco Co. Ltd. v. Government of Malaysia*⁽¹⁾ by the Federal Court where Gill F.J. (as he then was) in his judgment supporting the judgment of the then Lord President said at page 164 that

"...there was a string of decided cases ... in which it has been held that the effect of the relevant provisions of the Income Tax Act, 1967 is that on the service of a notice of assessment on the person assessed the tax payable under the assessment becomes due and payable at the place specified in the notice, whether or not the person appeals against the assessment, and can then be recovered by the Government

by civil proceedings as a debt due to the Government. On such civil proceedings being brought by the Government, the court has no power to entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased."

He then cited with approval the judgment of Choor Singh J. in *Comptroller of Income Tax v. A. Co. Ltd.*⁽²⁾:

"... A taxpayer has no right to by-pass the Board of Review and take his complaint direct to court. And when the Comptroller of Income Tax sues a taxpayer to recover tax due under a notice of assessment, the taxpayer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the Ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling taxpayer will refuse to pay tax and when sued in court, will challenge the merits of the assessment, thus causing considerable delay in the collection of the tax. The proper course for every aggrieved taxpayer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review.

Gill F.J. then continued—

"In place of a Board of Review we now have the Special Commissioners of Income Tax. It is open to a taxpayer to go before them and prove that he is not liable to assessment. The doors of justice are not shut to him merely because the claimant is the Government, but he has to enter the doors of the Special Commissioners first to raise the plea of non-observance of the principle of natural justice or to establish that the Director-General acted arbitrarily and in a non-judicial manner. It is only after he has availed himself of that remedy as laid down by the law that he has a right to come to the courts."

The appellant argued on what was the intention of the Income Tax Act. But the words in the provision of our Income Tax Act referred to are clear enough. In *Cape Brandy Syndicate v. Inland Revenue Commissioners*⁽³⁾ Rowlatt J. said in his judgment at page 71:

"It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

The intention of the 1967 Act is manifested in fact in the amendments made by the Income Tax (Amendment) Act, 1960 which repealed section 81 of the Income Tax Ordinance, 1947. Section 81 of the old Ordinance provided that the collection of tax shall, in cases where notice of an objection or an appeal has been given, remain in abeyance until such objection or appeal is determined. This provision was repealed by the 1960 Act and its new section 82 (substituted by the 1960 Act) would seem to be a precursor of the present section 103 of the present Act for it provided that subject to section 87 (relating to deduction of tax from emoluments and pensions) tax for any year of assessment levied in accordance with the provisions of section 38 or 39 of the Ordinance shall, "notwithstanding any objection or appeal against the assessment on which such tax is levied, be payable at the place stated in the notice" within one month after the service of such notice.

I also cannot find any logical reason to support the appellant's contention that the provision of section 103 is confined only to one assessment or a composite assessment. The word "assessment" is defined in section 2 of the 1967 Act to mean *any* assessment. Such a contention would also produce absurd results as otherwise the Director-General would have to take separate suits in respect of each year of assessment.

The appellant also argued that because the assessment was inconclusive by virtue of an appeal duly and validly lodged in respect thereof the court could not invoke section 142(1) in granting the leave to sign final judgment because the word "sufficient" is not "conclusive." But this depends very much on the context in which the word "sufficient" is used. Bingham J. dealt with the words "sufficient evidence" appearing in sub-section 3 of section 193 of the Merchant Shipping Act, 1894 in the case of *Board of Trade v. Sailing Ship "Glenpark Limited"*⁽⁴⁾ where in his judgment he observed:

"By sub-section 3 of section 193 of the principal Act it is provided that in any proceedings for the recovery of the debt 'the production of the account (if any) of the expenses furnished in accordance with this Act or the distressed seamen regulations, and proof of payment of the expenses by or on behalf of the Board of Trade shall be sufficient evidence that the expenses were incurred or repaid under this Act by or on behalf of the Crown.' I think 'sufficient evidence' here means conclusive evidence, and for these reasons: The authority who makes the payments in the first instance acts in the interest of the shipowner as well as in that of the seaman. This is shown by such regulations as the 91st, 96th, and 97th, which direct the authority to confine the relief to what is actually necessary. And by sub-section 4 of section 191 the Board of Trade has a right to revise the account, and to disallow in favour of the shipowner such items as it may think fit. The authority abroad and the Board of Trade at home are both to protect the shipowner from any undue burden. With provisions such as these for his protection, I do not think the Legislature meant to allow the shipowner to dispute either the propriety of the demand made upon him or its amount. The production of the account and proof of its payment are therefore, in my opinion, meant by sub-section 3 of section 193 to be conclusive of the right of the Board of Trade to recover.

In the context of section 103(1), section 106(1) and (3) and section 143(1) of the Income Tax Act, 1967 the word "sufficient" in section 142(1) must therefore mean that it is conclusive for the purpose of Order 14 rule 1.

Leave to sign final judgment under Order 14 should be given where there is clearly no defence to the action. In *Jacobs v. Booth's Distillery Company*⁽⁵⁾ it was held that in considering an application under Order XIV when the court comes to the conclusion that the facts as disclosed in the defendant's affidavit even if assumed to be true in law do not constitute any defence it is only then that leave should be granted to the plaintiff to sign judgment under Order XIV. Lord Halsbury said:

"People do not seem to understand that the effect of Order XIV, is, that, upon the allegation of the one side or the other, a man is not to be permitted to defend himself in a court; that his rights are not to be litigated at all. There are some things too plain for argument; and where there were pleas put in simply for the purpose of delay, which only added to the expense, and where it was not in aid of justice that such things should continue, Order XIV was intended to put an end to that state of things, and to prevent sham defences from defeating the rights of parties by delay, and at the same time causing great loss to plaintiffs who were endeavouring to enforce their rights."

A In the same case Lord James of Hereford observed: "The view which I think ought to be taken of Order XIV, is that the tribunal to which the application is made should simply determine, 'Is there a triable issue to go before a jury or a court?' It is not for that tribunal to enter into the merits of the case at all. It ought to make the order only when it can say to the person who opposes the order, 'You have no defence. You could not by general demurrer, if it were a point of law, raise a defence here. We think it impossible for you to go before any tribunal to determine the question of fact.'"

B Section 103(1) of the Act says that subject only to that section, tax payable under an *assessment* shall on the service of the notice of assessment on the person assessed be *due and payable* at the place specified in that notice *whether or not that person appeals against the assessment*. Section 106(1) states that tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government, and sub-section (3) of that section further states that in any proceedings under that section the court *shall not entertain any plea* that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased. Section 143(1) further states *inter alia* that

C "no assessment, notice or other document purporting to be made or issued for the purposes of this Act shall be quashed or deemed to be void or voidable for want of form, or be affected by any mistake, defect or omission therein, if it is in substance and effect in conformity with this Act...."

D In the context of all the foregoing sections referred to above it is my view that the assessment may well be inconclusive for the purposes of section 97(1) of the Act but the words in those sections referred to are so clear that there can be no other construction to the words in section 142(1) of the Act but a clear direction that the certificate shall be a good basis to grant leave to sign final judgment. In this case the literal approach should be applied as Slessor L.J. said in *Re Prince Blucher, Ex parte Debtor*⁽⁶⁾ in construing the Bankruptcy Act, 1914—

E "But it was laid down many years ago, and was followed in *Warburton v. Loveland*⁽⁷⁾ that: 'Where the language of the Act is clear and explicit, we must give effect to it, whatever may be the consequences; for in that case the words of the statute speak the intention of the legislature.'"

G The appellant argued that it was never the intention of our Income Tax Act to allow the Director-General to impose one million dollars as income tax due and payable whereas the subject merely earns six thousand dollars a year (alluding perhaps to the *Sun Man Tobacco's* case). But I think the court is the wrong forum for the appellant to lay down his grievances that the Act is unfair or unjust for there is little that the court can do. To my mind the proper forum for such grievances is not the court but Parliament.

H For the above reasons the appeal is dismissed with costs.

I

Appeal dismissed.

Solicitors: *Gibb & Co.*